

AUG 03 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD BLOODWORTH; DINAH
BLOODWORTH, individually and as
parents and next friends of William
Anthony Bloodworth; WILLIAM
ANTHONY BLOODWORTH,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 05-35084

D.C. No. CV-01-00376-A-HRH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, Chief District Judge, Presiding

Submitted July 27, 2006^{**}
Anchorage, Alaska

Before: KOZINSKI, BERZON, and TALLMAN, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court's finding that Dr. Milstein was qualified to offer an expert opinion was not clearly erroneous. Given that Dr. Milstein is a board-certified pediatrician and pediatric neurologist with extensive training and experience, the district court did not abuse its discretion in allowing him to testify as an expert. *See* FED. R. EVID. 702.

The district court did not clearly err in finding that Dr. Milstein offered an unbiased, neutral opinion that was entitled to credence. “[T]he district court is in a unique position to admit the evidence, hear the testimony, and evaluate the credibility and demeanor of witnesses.” *Matter of McLinn*, 739 F.2d 1395, 1405 (9th Cir. 1984). Accordingly, we cannot say that the trial court's finding that Dr. Milstein was more credible than Dr. Rubin was clearly erroneous.

The district court also did not err in finding that Appellants failed to meet their burden of proof pursuant to ALASKA STAT. § 09.55.540. The district court reasonably determined that Drs. Fusco and Ramsey had “a duty to diagnose, manage, and treat childhood illness,” but that Appellants could not show that any act or omission by the doctors was the proximate cause of William Bloodworth's injuries.

AFFIRMED.